

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of	)	APR 14 2000
	)	
Request for Review of the	)	FEDERAL COMMUNICATIONS COMMISSION
Decision of the	)	OFFICE OF THE SECRETARY
Universal Service Administrator by	)	
	)	
Copan Public Schools	)	File No. SLD-26231
Copan, Oklahoma	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ADMINISTRATOR'S PETITION FOR CLARIFICATION  
AND/OR RECONSIDERATION**

The Universal Service Administrative Company (USAC)<sup>1</sup> submits this Petition for Clarification and/or Reconsideration of the Order issued by the Federal Communications Commission on the appeal by Copan Public Schools of a USAC decision concerning the Schools and Libraries Universal Service Support Mechanism.<sup>2</sup>

The *Copan* decision modified the categories of permissible reasons for changing a service provider during a funding year, a process known as a Service Provider Identification Number, or SPIN, change request. The Commission changed the operational procedures for the Schools and Libraries Program, to allow a SPIN change

<sup>1</sup> USAC is a private Delaware not-for-profit corporation. Pursuant to the Commission's Part 54 rules (47 U.S.C. Part 54), USAC administers the universal service support mechanisms for high-cost areas, low-income consumers, rural health care providers, schools and libraries, and the billing, collecting, and disbursing of all universal service funds. USAC is governed by a board of directors which includes a broad representation of both industry and non-industry interests. USAC files this petition only as it relates to administrative matters of the universal service support mechanisms.

<sup>2</sup> Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Order*, File No. SLD-26231, CC Docket Nos. 96-45, 97-21, FCC 00-100, (Mar. 16, 2000) ("*Copan*").

whenever an applicant seeking program support certifies that: (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers.<sup>3</sup>

The *Copan* decision creates several administrative issues that, in USAC's judgment as the administrator of the Schools and Libraries Program, require clarification. USAC has also received inquiries from applicants and service providers highlighting the need to clarify the procedures that will implement the *Copan* decision. In this Petition, USAC seeks clarification regarding five areas as set forth immediately below.<sup>4</sup>

1. *Clarification of Commission's Intent*

In *Copan*, the Commission stated that in situations where an applicant is allowed to change service providers, the new service provider will not be permitted to receive funding in an amount exceeding the amount of funds originally *requested* by the applicant on the applicant's FCC Form 471 request for funding.<sup>5</sup> This limitation in the *Copan* Order will be very difficult as an administrative matter to implement. Until USAC has made a funding commitment on the request, there has been no review of the request to determine the extent of eligibility. A Funding Request may be reduced or denied for any number of reasons (inclusion of ineligible items, incorrect discount percentage applied, mathematical error, invalid contract, etc.), making the only reliable amount the amount contained in the Funding Commitment Decision Letter.

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<sup>3</sup> Id. at ¶ 8.

<sup>4</sup> 47 C.F.R. § 1.106. In order to put these issues before the Commission, USAC files this petition under section 1.106 of the Commission's rules.

<sup>5</sup> *Copan*, at ¶ 8.

USAC calls this matter to the Commission's attention because we believe that the Commission may not have intended to allow SPIN changes up to the original amount requested by an applicant. Although it is true that, under the *Copan* order as written, the new service provider would never get more than was originally requested, it would be more consistent with other program rules regarding funding commitments, and far simpler administratively, for the Commission to require that the new service provider will not be permitted to receive funding in an amount exceeding what was originally *committed* by USAC in the applicant's Funding Commitment Decision Letter. That standard ties the amount of funding available for the new service provider to what was determined to be eligible for the old service provider, and thus treats both service providers similarly and in no way disadvantages the applicant.

Additionally, because the applicant in *Copan* sought its SPIN change after the issuance of the Funding Commitment Decision Letter, USAC believes that the Commission intended to apply the rule announced in *Copan* only to analogous situations; that is, when an applicant requests a SPIN change *after* a funding commitment has been made. If USAC receives word that the original service provider is protesting the SPIN change, then USAC can set aside the SPIN change request until the protest is resolved, as well as put the Funding Request on hold, so that no payments are disbursed until the dispute is resolved. Any other reading of *Copan* would pose great administrative difficulties and could lead to the Administrator's becoming involved in disputes between service providers. In this petition, USAC seeks to confirm that *Copan* applies to post-commitment requests only.

2. *Applicability to Tariff and Month-to-Month Services*

The *Copan* Order specifically requires the applicant to certify that the substitution of service providers is allowed “under the terms of the contract between the applicant and its original service provider.”<sup>6</sup> *Copan* thus appears to cover only those situations where the applicant had a written contract initially. USAC seeks clarification on the following question: Did the Commission intend to modify its previous decision regarding SPIN changes for tariff and month-to-month arrangements? We infer that the Commission intended to allow the use of the Commission-authorized SPIN change procedures that were in place prior to the *Copan* Order, i.e., only in instances where the tariff or month-to-month service provider ceases to do business or refuses to participate in the Schools and Libraries Program. This interpretation would be relatively simple to administer.

3. *Retroactivity*

Although the *Copan* Order makes it clear that it is effective upon its release date, March 16, 2000, USAC seeks clarification whether the Commission intends for decisions reached after March 16, 2000 to apply retroactively. For example, applicants who previously changed service providers in Funding Year 2 where the reason for the change was not consistent with FCC policy chose, in effect, to forego Schools and Libraries Program support during that funding year. Under the *Copan* decision, such an applicant’s prior selection of a substitute service provider may now be validated. If USAC receives a request for retroactive authorization of such a SPIN change, does the Commission intend that discounts shall be paid for the period after such SPIN change, but before the *Copan* decision? USAC systems currently in place would allow USAC to provide for such retroactive payments without difficulty.

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<sup>6</sup> *Id.* at ¶ 1.

4. *Additional Form 470*

Section C of the *Copan* Order makes it clear that the new (substitute) service provider did not have to participate in the initial competitive bidding process in order to be approved. The Order is silent, however, on whether the substitute service provider would be allowed to have a multi-year contract. This raises questions concerning the integrity of the competitive bidding process required by program regulations, in terms of how the Administrator would treat requests to change to a new provider. Accordingly, USAC seeks clarification on the following issue: Did the Commission intend to allow an applicant in such a situation to enter into a multi-year arrangement with the substitute service provider? If so, now that the program operates with an “evergreen” Form 470, which can be posted only once for a multi-year contractual relationship, thus validating the resulting contract for the entire term of that contract, in subsequent years when the applicant seeks support for services purchased under the multi-year contract, there would be no establishing Form 470 which the applicant could cite on their Form 471.

USAC is seeking clarification because the FCC rules state:

Section 54.504(b): *Posting of FCC Form 470.*

- (1) An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall submit a completed FCC Form 470 to the Administrator....
- (4) After posting on the Administrator’s website an eligible school’s, library’s, or consortium’s FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

If it is acceptable to allow the applicant to cite its original posted Form 470 (which started the competitive process in which the substitute service provider did *not* participate), thus allowing compliance with the rule cited above, USAC would need to develop new procedures and systems. We do not currently have an estimate of what it would cost to develop these new procedures and systems. Alternatively, an operational procedure that maintains the integrity of the competitive bidding process contemplated by the FCC Form 470 would be to allow the applicant to receive services from the substitute service provider just for the remainder of the funding year, if no Form 470 had been posted. USAC could also allow the applicant to enter into a long-term contract with the new service provider only after the filing of a Form 470. This procedure would comply with program rules regarding competitive bidding, which would be consistent with program administration as originally designed.

#### *Eligibility of Service Changes*

The final area in which USAC seeks clarification of the *Copan* decision relates to changes in services. Paragraph 10 of *Copan* states that “[f]or example, if the original bidders are no longer willing to provide the requested service, or if the applicant discovers a provider offering more competitive prices, then we believe that the applicant should have the flexibility to select the provider whose service offering best meets the applicant’s needs.” USAC does not read this statement to change the FCC’s current policies regarding changes in services, i.e., limiting service changes to situations where upgraded services are available or replacement services for obsolete items are available.

- They will not result in a change in price for the products;

They are consistent with state and local bidding laws and the terms and conditions of the original contract;

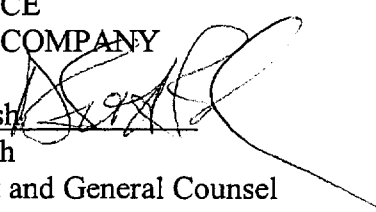
- The substituted products do not have a higher percentage of ineligible functions than the original product.

Operationally, USAC can continue to handle requests for changes in services in the same way, whether the service change requests are made while keeping the original service provider or while seeking different services from a new service provider. We expect, however, that the Schools and Libraries Division processing workload will increase, which may increase our administrative costs. Changes in service providers will likely entail review of the product offerings of the substitute service provider to assure they meet the criteria identified above. Have we accurately interpreted this portion of the Commission's order?

### CONCLUSION

In conclusion, the Administrator seeks clarification and/or reconsideration in order to implement the *Copan* Order in the most efficient, equitable and expedited manner consistent with the Commission's directives.

Respectfully submitted,  
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